

**CIVIL SERVICE**

**CIVIL SERVICE COMMISSION**

**Appeals, Discipline and Separations**

**Law Enforcement Officer and Firefighter Removal Appeals**

**Proposed Amendments: N.J.A.C. 4A:2-2.8 and 2.13**

**Proposed Repeal and New Rule: N.J.A.C. 4A:2-2 Appendix**

Authorized By: Civil Service Commission, Robert M. Czech, Chair/CEO.

Authority: N.J.S.A. 11A:2-6(d) and 11A:2-13 et seq.; P.L. 2009, c. 16; and P.L. 2008, c. 29.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2011-207.

**A public hearing** concerning the proposal will be held on:

Tuesday, October 18, 2011 at 3:00 P.M.

Civil Service Commission Room

44 South Clinton Avenue

Trenton, New Jersey

**Please call** Elizabeth Rosenthal at (609) 984-7140 if you wish to be included on the list of speakers.

Submit written comments by November 18, 2011 to:

Henry Maurer, Director

Merit System Practices and Labor Relations

Civil Service Commission

P.O. Box 312

Trenton, New Jersey 08625-0312

The agency proposal follows:

### **Summary**

P.L. 2009, c. 16, N.J.S.A. 40A:14-200 et seq., signed into law on March 5, 2009 and effective on June 1, 2009, established a 180-day time limit for the appeal process for terminations of certain law enforcement officers and firefighters. In compliance with N.J.S.A. 40A:14-208, the Office of Administrative Law (OAL) and the Civil Service Commission separately but simultaneously adopted temporary rule amendments to N.J.A.C. 1:4B and N.J.A.C. 4A:2-2 to establish appeal procedures under this new law. The amendments were readopted last year following a proposed readoption and public notice and comment. See 42 N.J.R. 693(a), 1855(a). Although P.L. 2009, c. 16, concerns law enforcement officers and firefighters in both civil service and non-civil service jurisdictions, the Civil Service Commission's rules regarding police and fire removal appeals apply only to certain law enforcement officers and firefighters employed in civil service jurisdictions.

Following consultation with the OAL, the Commission now proposes amendments to two of the relevant civil service rules and proposes a new Appendix to N.J.A.C. 4A:2-2.13 to replace the existing Appendix to that section. OAL's proposed rule amendments appear elsewhere in this issue of the New Jersey Register. The Commission also proposes a new Appendix to N.J.A.C. 4A:2-2 to

replace the current Appendix to the subchapter, which is the Major Disciplinary Appeal Form, used for all major disciplinary appeals other than certain law enforcement and firefighter removals.

Proposed amendments to N.J.A.C. 4A:2-2.8 and 2.13 are intended to address the substantial delays that frequently occur in major disciplinary appeals where an employee does not provide all the information required in the applicable appeal form. N.J.A.C. 4A:2-2.8(e), which governs major disciplinary appeals for all civil service employees with permanent status (except for certain law enforcement officers and firefighters who have been removed), currently states that failure of an employee to provide the information required in the Major Disciplinary Appeal Form shall not result in dismissal of the appeal but shall delay processing of the appeal until the missing information is submitted, and may result in a reduced back pay award in accordance with N.J.A.C. 4A:2-2.10(d)4. Unfortunately, this rule provision has not been effective by itself in expediting the major disciplinary appeal process. Therefore, a proposed amendment to N.J.A.C. 4A:2-2.8(e) would provide that an appeal may be dismissed after notice of, and a reasonable opportunity to correct, the deficiency where the appellant fails to include the required information with his or her appeal form.

As indicated above, the existing Appendix to N.J.A.C. 4A:2-2 is proposed for repeal and a new one, the Major Disciplinary Appeal Form that is currently used by the Civil Service Commission and civil service employees, is proposed to replace it. The new form refers to the Civil Service Commission rather than the Department of Personnel, in accordance with P.L. 2008, c. 29, which abolished the Department and

replaced it with the Commission, in but not of the Department of Labor and Workforce Development.

Boxes 1, 2 and 3 would remain substantially the same, except that spaces have been added for the employee's e-mail address in Box 1; the e-mail address of the lawyer or union representative (if any) in Box 2; and the e-mail address of the personnel officer or employer representative in Box 3. Box 3 currently only refers to the personnel officer; the proposed new form would provide the alternate designation of employer representative where that is applicable. There would be no change to Box 4, which requires the employee's signature and date. However, Box 5 would add to the list of the mandatory attachments to the form a check or money order payable to NJCSC for the \$20.00 appeal fee, required by P.L. 2010, c. 26, which mandated that the Commission charge fees for certain types of appeals, including major disciplinary appeals. The mailing address would be moved from Box 5 to an expanded, new "Note," which would reiterate the \$20.00 fee requirement and advise of the exemption from the fee of those individuals receiving public assistance under specified statutes or who are veterans as defined in N.J.S.A. 11A:5-1 et seq. This expanded Note would also advise appellants that if they are suspended or removed, but fail to seek alternate employment during the pendency of their appeal, any back pay award may be reduced.

N.J.A.C. 4A:2-2.13(d), which governs removal appeals of certain law enforcement officers and firefighters, is proposed for amendment to add paragraph (d)1, which states that the failure of the appellant to provide the information and documents required by the Law Enforcement Officer and Firefighter Removal

Appeal Form may result in dismissal of the appeal after the appellant is given notice of, and a reasonable opportunity to correct, the deficiency.

The Law Enforcement Officer and Firefighter Removal Appeal Form at N.J.A.C. 4A:2-2.13 Appendix is proposed for deletion with a new form proposed to replace it. The contents of this proposed form have been carefully prepared to ensure that the OAL and the Commission have the information they need to expeditiously process removal appeals of certain law enforcement officers and firefighters as intended by P.L. 2009, c. 16.

The proposed new form would move from Box 6 to Box 2 the space needed to indicate the date of the incident subject to the removal and the date on which the employee was served with the Final Notice of Disciplinary Action. The new Box 2 would clearly state that the foregoing information **must** be provided. (emphasis in form) The proposed form would move from Box 5 to Box 3 the subject of the Preliminary Notice of Disciplinary Action and the Final Notice of Disciplinary Action and clearly state that the appellant **must** provide **both** of these documents with his or her form. (emphasis in form) The current Box 3, which indicates a requirement that the appellant provide the form and attachments to the employee's personnel officer or employer representative, is moved to Box 4 in the proposed new form. Box 4, which currently requests contact information for the appointing authority representative of the appeal, if known, is moved to Box 6 on the proposed new form. The Note on the reverse side of the form would indicate that the appellant must submit the form and attachments with an appeal filing fee of \$20.00 to the Civil Service Commission. As indicated with respect to the proposed new Major Disciplinary Appeal Form, the fee is required in accordance with P.L. 2010, c.

26. Language substantively the same as that proposed for the Major Disciplinary Appeal Form is proposed regarding statutory exemptions from paying the appeal fee. Finally, the portion of the form on the reverse side setting forth the mailing and hand-delivery addresses at which the Form and attachments are received would specify that, in the case of the OAL, the employee must send the form and attachments to the attention of the Clerk's Office, Direct Filing.

As the Commission has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

It is anticipated that the proposed amendments to N.J.A.C. 4A:2-2.8 and 2.13 would have a positive social impact. The option of dismissing a major disciplinary appeal of certain civil service employees, or a removal appeal in the case of certain law enforcement officers and firefighters, would only be exercised where, after notice and a reasonable opportunity to be heard, an appellant still fails to provide all required information and documentation. Therefore, the appellant would have a reasonable opportunity, clearly stated in the procedures, to rectify any deficiencies which may be identified. More important, an appellant's appeal would be processed at a predictable pace, benefiting the appellant, the appointing authority, the OAL, and the Civil Service Commission.

The proposed new Appendices to N.J.A.C. 4A:2-2 and 2.13 are expected to have a positive social impact due to their clearer organization and statements regarding the information that must be completed on the Forms as well as attached to the Forms. Additionally, both Forms would state for the first time that an

individual filing a removal appeal must include with the Form the \$20 appeal fee required by law. Also, requiring an individual appealing a law enforcement officer or firefighter removal to send the Law Enforcement Officer and Firefighter Removal Appeal Form to the attention of the Clerk's Office, Direct Filing, OAL, as instructed on the Form, would ensure that the processing of the appeal commences in a timely fashion.

### **Economic Impact**

The Commission anticipates a positive economic impact to result from the proposed amendments and proposed new Appendices. As noted in the Social Impact statement above, the option of dismissing a major disciplinary appeal or a removal appeal would only be exercised where, after notice and a reasonable opportunity to be heard, an appellant still fails to provide all required information and documentation. An appellant's appeal would be processed at a more predictable and efficient pace, and thereby necessitate the utilization of fewer resources on the part of the appointing authority, the OAL, and the Civil Service Commission. If a removal is modified to a lesser disciplinary action, less delay would mean a reduced obligation for back pay and, thus, less of an impact on public funds. Similarly, an employee supplying all required information and documentation would benefit from an earlier resolution of his or her appeal.

It is further anticipated that the proposed new Appendices, consisting of the revised Major Disciplinary Appeal Form and the revised Law Enforcement Officer and Firefighter Removal Appeal Form, would have a positive impact on public expenditures as well as the economic outlook of the appellant by helping to ensure that the appellant understands the information, documentation, and fee payment

that must be included with the appeal in order for it to be processed. Additionally, the revised Major Disciplinary Appeal Form would make clear the need for an employee to mitigate his or her damages by seeking alternate employment if the employee has been suspended or removed.

### **Federal Standards Statement**

A Federal standards analysis is not required because the proposed amendments and Appendices pertain to civil service employment in State and local government and are not subject to any Federal standards or requirements.

### **Jobs Impact**

It is not anticipated that the proposed amendments and Appendices would cause the generation or loss of jobs. The proposal would govern major disciplinary procedures for certain civil service employees.

### **Agriculture Industry Impact**

It is not anticipated that the proposal would have any agriculture industry impact. The proposal would govern major disciplinary procedures for certain civil service employees.

### **Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required since the proposed amendment would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment would govern major disciplinary appeals of certain civil service employees in the civil service of State and local government.

### **Smart Growth Impact**



It is not anticipated that the proposal would have any impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan as defined under Executive Order No. 4 (2002).

### **Housing Affordability Impact**

Since it concerns major disciplinary appeals of certain civil service employees, the proposal would have no impact on the number of housing units or the average cost of housing in New Jersey.

### **Smart Growth Development Impact**

Since it concerns major disciplinary appeals of certain civil service employees, the proposal would have no impact on new construction within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan.

**Full text** of the rule proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 4A:2-2 Appendix.

**Full text** of the proposed amendments and new rule follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

#### 4A:2-2.8 Appeals to Civil Service Commission

(a) An appeal from a Final Notice of Disciplinary Action must be filed within 20 days of receipt of the Notice by the employee. Receipt of the Notice on a different date by the employee's attorney or union representative shall not affect this appeal period.

(b) If the appointing authority fails to provide the employee with a Final Notice of Disciplinary Action, an appeal may be made directly to the Commission within a reasonable time.

(c) The appeal shall be substantially similar in format to the Major Disciplinary Appeal Form illustrated in the subchapter Appendix, incorporated herein by reference, and the employee shall provide a copy of the appeal to the appointing authority. The employee shall attach to the appeal a copy of the Preliminary Notice of Disciplinary Action and, unless (b) above is applicable, the Final Notice of Disciplinary Action. The appeal shall also include the following information:

1. The name, title, mailing address and telephone number of the appointing authority representative to whom the notices were provided;
2. The employee's name, mailing address and telephone number; and
3. The action that is being appealed.

(d) The employee should also include a statement of the reason(s) for the appeal and the requested relief.

(e) Failure of an employee to provide the information specified in (c) above [shall not result in dismissal of the appeal, but] shall delay processing of the appeal until the required information is provided, [and] may result in a reduced back pay award pursuant to N.J.A.C. 4A:2-2.10(d)4, **or may result in dismissal of the appeal after notice of and a reasonable opportunity to provide the missing information.**

(f) See N.J.A.C. 4A:2-2.13 for removal appeals by certain law enforcement officers and firefighters.

## 4A:2-2.13 Removal appeals of certain law enforcement officers and firefighters

(a) – (c) (No change.)

(d) The officer or firefighter shall have 20 days from the date of receipt of the Final Notice to appeal the removal. Receipt of the Final Notice on a different date by the appellant's attorney or negotiations representative shall not affect this appeal period. If the appellant does not receive the Final Notice as required by (c) above, he or she shall file an appeal of removal within a reasonable time. The officer or firefighter shall file the appeal simultaneously with the Office of Administrative Law and the Civil Service Commission using the Law Enforcement Officer and Firefighter Removal Appeal Form in the Appendix to this section. If the appellant files an appeal within 20 days of receipt of the Final Notice with the Civil Service Commission but not with the Office of Administrative Law, or the appellant files an appeal within 20 days of receipt of the Final Notice with the Office of Administrative Law but not with the Commission, the appeal shall still be considered timely. However, if the appellant fails to submit the appeal within 20 days to either the Office of Administrative Law or the Commission, the appeal shall be considered untimely and the Commission shall dismiss the appeal. See N.J.A.C. 1:4B for processing of the appeal at the Office of Administrative Law.

**1. If the appellant fails to provide the information and documents required by the Law Enforcement Officer and Firefighter Removal Appeal Form, after notice of and reasonable opportunity to correct the deficiency, the Commission may dismiss the appeal.**

(e) – (j) (No change.)

## [APPENDIX

OFFICE OF ADMINISTRATIVE LAW/CIVIL SERVICE COMMISSION  
**LAW ENFORCEMENT OFFICER & FIREFIGHTER REMOVAL APPEAL FORM**

**Use this form to submit an appeal of removal of a law enforcement officer or firefighter  
to the Office of Administrative Law and Civil Service Commission**

**1.**

Your Name: \_\_\_\_\_

Address: \_\_\_\_\_

 \_\_\_\_\_ Telephone: ( ) -  
 (City) (State) (Zip Code)

Email: \_\_\_\_\_

**2.**
 Will you be represented by a lawyer or union representative at the hearing? ☐ YES ☐ NO  
 If yes, complete the following:

Representative Name: \_\_\_\_\_

Union or Law Firm: \_\_\_\_\_

Address: \_\_\_\_\_

 \_\_\_\_\_ Telephone: ( ) -  
 (City) (State) (Zip Code)

Email: \_\_\_\_\_

**3.**

Give a copy of this form and attachments to your Personnel Officer/Employer Representative

Employing Agency Name: \_\_\_\_\_

Personnel Officer's/Employer Representative's Name: \_\_\_\_\_

Address: \_\_\_\_\_

 \_\_\_\_\_ Telephone: ( ) -  
 (City) (State) (Zip Code)

Email: \_\_\_\_\_

**4.**

Appointing Authority Representative for Appeal, if known

Name: \_\_\_\_\_

Address: \_\_\_\_\_

 \_\_\_\_\_ (State) \_\_\_\_\_ (Zip Code)  
 (City)

Telephone: ( ) - Fax #: ( ) -

Email: \_\_\_\_\_

**5.**

Attach the following:

- ☐ Preliminary Notice of Disciplinary Action  
☐ Final Notice of Disciplinary Action

**6.**

Date of incident subject to removal: \_\_\_\_\_  
 Date employee served with Final Notice of Disciplinary Action: \_\_\_\_\_

**Note:** Your appeal will not be processed unless this appeal form **with attachments** is completed, signed and submitted to the Office of Administrative Law **and** the Civil Service Commission. A copy of this appeal **must** also be served upon the appointing authority (your employer). You must submit this appeal to both the Office of Administrative Law and the Civil Service Commission within twenty (20) days after you receive the Final Notice of Disciplinary Action. If your appeal is not submitted within twenty (20) days, it will be dismissed. You must seek alternate employment; failure to do so may reduce the back pay award.

**SIGNATURE****EMPLOYEE/EMPLOYEE REPRESENTATIVE****DATE**

**Mail to:** Office of Administrative Law  
 33 Washington Street  
 Newark, New Jersey 07102

**AND**

Civil Service Commission  
 Attention Hearings Unit-Unit H  
 P.O. Box 312  
 Trenton, NJ 08625-0312

**Hand**

**Deliver:** Civil Service Commission  
 3 Station Plaza  
 44 South Clinton Avenue  
 Trenton, NJ

**AND**

Office of Administrative Law  
 7<sup>th</sup> Floor  
 33 Washington Street  
 Newark, New Jersey

mmg ]

(**Agency Note:** The text of proposed new N.J.A.C. 4A:2-2.13 Appendix and 4A:2-2 Appendix follows without boldface symbolizing proposed new text; those portions of the appendices appearing in boldface are proposed to be so permanently.)

## APPENDIX

OFFICE OF ADMINISTRATIVE LAW/CIVIL SERVICE COMMISSION  
**LAW ENFORCEMENT OFFICER & FIREFIGHTER REMOVAL APPEAL FORM**

Use this form to submit an appeal of removal of a law enforcement officer or firefighter  
to the Office of Administrative Law and Civil Service Commission

**1.**

Employee Name: \_\_\_\_\_

Address: \_\_\_\_\_

(City) (State) (Zip Code)

Telephone: ( ) - Email: \_\_\_\_\_

**2.**The following information **MUST** be provided:

Date of incident subject to removal: \_\_\_\_\_

Date employee served with Final Notice of Disciplinary Action: \_\_\_\_\_

**3.**You **MUST** provide BOTH of the following:Preliminary Notice of Disciplinary Action **and** Final Notice of Disciplinary Action**4.**

Give a copy of this form and attachments to your Personnel Officer/Employer - Representative

Employing Agency Name: \_\_\_\_\_

Personnel Officer's/Employer Representative's Name: \_\_\_\_\_

Address: \_\_\_\_\_

(City) (State) (Zip Code)

Telephone: ( ) - Fax# ( ) -

Email: \_\_\_\_\_

**5.**

If you will be represented by a lawyer or union representative at the hearing, please complete:

Representative Name: \_\_\_\_\_

Union or Law Firm: \_\_\_\_\_

Address: \_\_\_\_\_

(City) (State) (Zip Code)

Telephone: ( ) - Fax# ( ) -

Email: \_\_\_\_\_

<b>6.</b>	Appointing Authority Attorney for Appeal, if known:		
	Name: _____		
	Address: _____		
	(City) _____	(State) _____	(Zip Code) _____
	Telephone: (    )    -                         Fax# (    )    -                         _____		
	Email: _____		

**Note:** Your appeal will not be processed unless this appeal form **with attachments** is completed, signed and submitted to the Office of Administrative Law **and** the Civil Service Commission. A copy of this appeal **must** also be served upon the appointing authority (your employer). You **must** submit this appeal to both the Office of Administrative Law and the Civil Service Commission within twenty (20) days after you receive the Final Notice of Disciplinary Action. If your appeal is not submitted within twenty (20) days, it **will be dismissed**. You must seek alternate employment; failure to do so may reduce the back pay award.

**Pursuant to N.J.S.A. 11A:4-1.1 there is a \$20 fee for disciplinary appeals. The filing fee of \$20 must be submitted to the Civil Service Commission along with the appeal form.** Payment must be made by check or money order only, payable to NJCSC. Persons receiving public assistance pursuant to N.J.S.A. 44:8-107 et seq., N.J.S.A. 44:7-85 et seq., or N.J.S.A. 44:10-55 et seq., and veterans as defined by N.J.S.A. 11A:5-1 et seq., are exempt from this appeal fee.

#### **SIGNATURE**

#### **EMPLOYEE/EMPLOYEE REPRESENTATIVE**

#### **DATE**

**Mail to:** Civil Service Commission                      **AND**  
 Attention: Hearings Unit-Unit H  
 PO Box 312  
 Trenton, NJ 08625-0312

Office of Administrative Law  
**Attention: Clerk's Office**  
**Direct Filing**  
 33 Washington Street  
 Newark, New Jersey 07102

**Hand Deliver:** Civil Service Commission                      **AND**  
 3 Station Plaza  
 44 South Clinton Avenue  
 Trenton, NJ 08625

Office of Administrative Law  
**Attention: Clerk's Office**  
**Direct Filing**  
 7<sup>th</sup> Floor  
 33 Washington Street  
 Newark, New Jersey 07102

**(Office of Administrative Law Note:** The Appendix that appears immediately below is proposed new N.J.A.C. 4A:2-2 Appendix.)

## APPENDIX

**MAJOR DISCIPLINARY APPEAL FORM**

New Jersey Civil Service Commission - Division of Merit System Practices and Labor Relations

**Mail completed form to: Civil Service Commission, Unit H, P.O. Box 312, Trenton, NJ 08625-0312.**

<b>1.</b>	Your Name: _____  Address: _____ <div style="display: flex; justify-content: space-between;"> <div>           (City) _____ (State) _____ (Zip Code) _____         </div> <div>           Daytime Telephone: (    ) _____         </div> </div> Email: _____
<b>2.</b>	Will you be represented by a lawyer or union representative at the hearing? <input type="checkbox"/> YES <input type="checkbox"/> NO If YES, complete Section 2. Representative Name: _____  Union or Law Firm: _____  Address: _____ <div style="display: flex; justify-content: space-between;"> <div>           (City) _____ (State) _____ (Zip Code) _____         </div> <div>           Telephone: (    ) _____         </div> </div> Email: _____
<b>3.</b>	Give a copy of this form and attachments to your Personnel Officer/Employer Representative Personnel Officer's/ Employer Representative's Name: _____  Address: _____ <div style="display: flex; justify-content: space-between;"> <div>           (City) _____ (State) _____ (Zip Code) _____         </div> <div>           Telephone: (    ) _____         </div> </div> Email: (if known) _____
<b>4.</b>	Your or your representative's signature <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="border-bottom: 1px solid black; width: 60%;"></div> <div>Date: _____</div> </div>
<b>5.</b>	<b>ATTACH the following to this form:</b> 1. Preliminary Notice of Disciplinary Action. 2. Final Notice of Disciplinary Action. 3. Check or Money Order for \$20.00 payable to NJCSC.

**NOTE:** Your appeal will NOT be processed unless Sections 1-4 are completed and the three documents listed in Section 5 are included. Pursuant to P.L. 2010, c. 26, effective July 1, 2010 there is a \$20 fee for disciplinary appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to NJ CSC and sent to the CSC, Unit H, P.O. Box 312, Trenton, N.J. 08625. Persons receiving public assistance pursuant to P.L. 1947, c.156 (C.44:8-107 *et seq.*), P.L.1973, c. 256 (C.44:7-85 *et seq.*), or P.L.1997, c.38 (C.44:10-55 *et seq.*), and veterans as defined by N.J.S.A.11A:5-1 *et seq.* are exempt from this appeals fee. If you have been suspended or removed, you should seek alternate employment. In case your penalty is reduced, failure to seek alternate employment could reduce your back pay award.

DPF-714 revised 07-23-10

► **Hand Deliver:** 3 Station Plaza, 44 South Clinton Ave., Trenton NJ